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Error to Circuit Court, Princess Anne County.

Action by A. R. Smith against the Norfolk Southern Railroad Company. Judgment for plaintiff, and defendant brings error. Verdict set aside, judgment reversed, and cause remanded.

*James G. Martin*, of Norfolk, for plaintiff in error.

*R. R. Hicks*, and *W. R. L. Taylor*, both of Norfolk, for defendant in error.

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HILL v. STARK et al.

Jan. 24, 1918.

[94 S. E. 792.]

**1. Descent and Distribution (§ 93\*)—"Advancement"—Essentials.**

—In general, two elements are essential to constitute an "advancement," a gift as distinguished from a transfer for valuable consideration by the parent to the child, and the intention of the donor that the gift shall be an advancement.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Advancement. For other cases, see 1 Va.-W. Va. Enc. Dig. 190, 191.]

**2. Descent and Distribution (§ 109\*)—Advancement—Essentials.—**

Where the mother employed her son as her agent and attorney in fact to control her interest in a partnership, according to his judgment, to receive for compensation the profits, and, if the mother died, her interest therein, including her contribution to the capital stock, to become the property of the son, but if he should die before her, the capital to go to the mother and the profits to the son's estate, in consideration of which the son agreed to pay interest on the original capital, the instrument contained all the elements of a contract executory, exhibiting no intention to create an advancement, and on the mother's death the son could not be compelled to bring into hotchpot the amount of the capital invested before being allowed to participate in the estate.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 192, 195.]  
*Sims, J.*, dissenting.

Appeal from Circuit Court, Culpeper County.

Bill by Adina Hill against J. C. Stark for himself and as administrator of Kate N. Stark, deceased, and others. Decree for defendants, and plaintiff appeals. Affirmed.

*Edwin H. Gibson*, of Culpeper, for appellant.

*Grimsley & Miller*, of Culpeper, for appellees.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.